IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 978 OF 2007

Bharat Petroleum Corporation Ltd. ... Petitioner

versus

Petroleum Workmen's Union and others ...

Respondents

Mr. J.P. Cama, Senior Advocate, with Mr. R.S. Pai, instructed by M/s. Sanjay Udeshi & Co., for the petitioner.

Mr. Arshad Shaikh with Mr. R.M. Pethe, for the respondents.

CORAM: **SWATANTER KUMAR, C.J.** &
S.C. DHARMADHIKARI, J.

Order reserved on : June 25, 2007
Order delivered on: July 19, 2007

ORDER (Per Swatanter Kumar, C.J.):

This petition was disposed of by us by a consented order dated April 21, 2007. The relevant part of the order reads as under:-

> "When this matter came up for hearing before this Court on April 17, 2007, the Court had passed the following order:-
>
> > "After we had heard the learned counsel for the respective parties at some length, they have arrived at an arrangement without prejudice to their rights and contentions.

It is agreed that four unions to this petition would not proceed on strike in view of the fact that the appropriate Government i.e. Union of India is being directed to consider the failure report submitted by the Conciliation Officer on all four disputes referred by the Unions and pass appropriate orders as contemplated under Section 10 of the Industrial Disputes Act, within a period of 30 days from today. Further the workmen would be entitled to pray before the court of reference, for interim directions for payment of Performance Linked Incentive scheme (PLIS) for the Financial Years 2004-05 and 2005-2006, at least at parity to the amount paid to other workmen. This application would be heard by the court of reference without prejudice to the rights and contentions of the management including on the issue of maintainability of such application.

In view of the common stand taken by the parties, no further directions are called for at this stage. Other directions would be passed by the court while disposing of the matter finally.

List this matter for hearing on 18th April, 2007."

2. As is evident from the above order, the matter was listed for today for making some mentioning in regard to disposal of the case and to ensure that no further disputes survive between the parties at least before the Courts. It may be noticed that in furtherance to the assurance given on behalf of the workmen, they did not proceed on strike for which the call has been given. The industry in question is a refinery, producing petroleum products, and is a sensitive industry which works in the larger public interest. It is also not in dispute that the petitioner company is one of the main suppliers of the petroleum products in the country.

3. The only request made on behalf of the

workmen today before us is that the Central Government Industrial Tribunal should dispose of the matter within a fixed time framework, if the same is referred to it by the Appropriate Government. We find the request to be reasonable. As far as the Reference pending before the Government is concerned, in our order of April 17, 2007, we had directed the Government to consider the entire matter and pass appropriate orders as contemplated under Section 10 of the Industrial Disputes Act, 1947, within 30 days from April 17, 2007. We reiterate that direction and if the reference is made to the Tribunal, the Tribunal shall make an endeavour to conclude the proceedings in the reference as expeditiously as possible and, in any case, not later than nine (9) months from the date the reference is received by the Tribunal. We make it clear that this condition shall be operative only if both the parties to the reference before the Tribunal fully co-operate and do not take unnecessary adjournments. Not more than three dates will be given to either of the parties for leading evidence. We also grant liberty to the workmen to move the Industrial Tribunal, if necessary, for grant of ad-interim reliefs. Of course, this liberty would be without prejudice to the rights and contentions of the management including maintainability of reference. We make it clear that this consented order is obviously no indication either way of any of the decision of this Court including the maintainability of the petition and even the observations made would be inconsequential for the proceedings before the Tribunal.

4. It is further clarified that that the Financial Years 2004-05 and 2005-06 mentioned in our order dated April 17, 2007, be read as Financial Years 2002-03 and 2003-04.

5. The petition is disposed of with the above consented order which we find otherwise to be just, fair and equitable. The parties are directed to bear their own costs".

2. The matter was not on Board nor any motion was filed.

However, the learned counsel appearing for respondent Nos. 1 to 4 mentioned this matter. Upon mentioning, the matter was taken up in the presence of the learned counsel appearing for the parties. It was prayed on behalf of respondent Nos. 1 to 4 that the papers be produced before us for "speaking to Minutes/Clarification" of the order dated April 21,2007. The basis for this mentioning was the letter dated 15th May, 2007, issued by the respondents which was placed on record in presence of the counsel appearing for the parties and which reads as under:-

> "No. L-30011/70-2006-IR (M)
> Government of India/Bharat Sarkar
> Ministry of Labour & Employment/Shram AurRojgar Mantralaya.
>
> New Delhi dated 15/5/2007
>
> To
>
> The Presiding Officer,
> Central Govt. Industrial Tribunal-cum-Labour
> Court No.2,2nd floor,. Shram Raksha Bhavan,
> Shivsrushti Road,
> Opposite Priyadarshani, Sion,
> Mumbai-400 022.
>
> Sub: Directions of Hon'ble High Court of Bombay in WP (Lodging) WP No. 854/2007 dated 21/4/2007 on an industrial dispute between the management of BPCL and their workmen.
>
> Sir,
>
> I am directed to refer to Hon'ble High Court of Bombay's direction on the above mentioned writ petition and to say

that the demand relating to parity in payment of the quantum of PLIS between the management and the workmen has already been referred for adjudication to CGIT No.2, Mumbai, vide this Ministry's order of even number dated 21/11/2006. The issues raised along with the strike notice dated 27/3/2007 and 30/3/2007 are in the nature of statement of reasons on justification of the above demand which has already been referred for adjudication vide the above mentioned order.

2. The High Court of Bombay vide their order dated 21/4/2007 have issued directions to dispose of the aforesaid industrial dispute within a period of 9 months from the date of reference received by the Tribunal. A copy of the same is enclosed for ready reference and compliance.

Yours faithfully,
sd/-
(N.S. Bora)
Desk Officer."

The argument on behalf of respondent Nos. 1 to 4 was that in face of the above letter, the claims of the petitioners as mentioned in the writ petition as well as before the authorities for being referred to the Labour Court stands rejected and thus the Government has tried to overreach the order of the Court and, therefore, it was prayed that the order of the Court be clarified to specifically say that all the issues raised in the strike notices dated 27th March, 2007 and 3rd April, 2007 be referred to the Presiding Officer, Industrial Tribunal-cum-Labour Court, Mumbai. This request was opposed by the learned counsel appearing for the management on the ground that no clarification was needed and even

if the issues were not specifically referred, the workmen should take recourse to an independent remedy in accordance with law and there was no occasion for clarifying the order dated 21st April, 2007.

3. We are of the considered view that it is not necessary for the workmen to take recourse to take out independent legal proceedings for questioning or challenging the correctness of the order of the Government dated 15th May, 2007 inasmuch as it does not reject the reference claimed by the workmen. The language of the order clearly says that the other issues claimed are in the nature of statement of reasons or justification for the principal demand raised by the workmen. In other words, the Industrial Tribunal-cum-Labour Court is expected to go into the merits of these reasoning or ancillary issues. The language of the letter further shows that the ancillary disputes to the principal dispute stand referred by necessary implication. Such an approach, besides being just, would also be equitable between the parties as the intent behind the order dated 21st April, 2007 was to avoid strike as well as unnecessary litigation between the parties. Adjudication of their real disputes by the competent forum was the primary object without disturbing the harmony of employer-employee relationship. Reference of ancillary issues to the main issue does not tantamount to rejection of

reference of the disputes. The purpose is to have a complete determination of the disputes by the competent forum. We are unable to read the letter dated 15th May, 2007 as an order of rejection of reference, as, in any case, the scope of jurisdiction under Section 10 of the Industrial Disputes Act of the competent Government is a very limited one.

4. Furthermore, we must also record here that the spirit of the consented order wherein the workmen had agreed not to go on strike in terms of the notice of strike was reference of their existing disputes to the competent forum. It will be unjust and unfair, if they are compelled to take further litigation particularly when the reference made to the Industrial Tribunal-cum-Labour Court and even the other matters are specifically indicated as " reasons on justification of the demand". Certainly, no clarification of the order dated 21st April, 2007 is needed. But we do express a fond hope and expect that the Industrial Tribunal-cum-Labour Court would deal with the entire matter in terms of the order of reference and clarificatory letter dated 15th May, 2007, keeping in view the observations made in this order. The application of respondent Nos. 1 to 4 is accordingly disposed of.

CHIEF JUSTICE

S. C. DHARMADHIKARI, J.